

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DANIEL MASARIK,

Petitioner,

v.

Case No. 11-C-0048

UNITED STATES OF AMERICA,

Respondent.

DECISION AND ORDER DENYING MASARIK'S MOTION FOR
RECONSIDERATION (DOC. 10), REQUIRING RESPONDENT TO FILE AN
ANSWER ON OR BEFORE JUNE 22, 2012, AND ALLOWING PETITIONER TO
FILE A REPLY ON OR BEFORE JULY 13, 2012

On July 5, 2011, this court denied as moot Daniel Masarik's motion to proceed in forma pauperis and motion for the disclosure of *Brady* materials. At the same time, the court granted Masarik's request for an extension of time to file a brief in support of his 28 U.S.C. § 2255 motion and denied his request for appointment of counsel. After concluding that Masarik had colorable constitutional claims, the court ordered Masarik to file a memorandum of law in support of his § 2255 motion or before August 26, 2011, and ordered the government to file an answer thirty days from receipt of Masarik's memorandum of law.

Masarik never filed a memorandum in support of his § 2255 motion. Instead, he filed a motion for reconsideration on July 29, 2011, asking the court to order discovery, appoint counsel, and grant an additional thirty-day extension to file his memorandum of law. To date, Masarik has not filed his memorandum and, as a consequence, the government has not filed its answer.

With respect to the motion for reconsideration, Masarik offers no basis for revisiting the court's earlier ruling. The court denied Masarik's request for *Brady* material because the request was duplicative of his § 2255 claim. Undoubtedly, it is within this court's discretion under Rule 6 of the Rules Governing § 2255 Cases to authorize a party to conduct discovery upon a movant's specific showing of good cause. *Hubanks v. Frank*, 392 F.3d 926, 933 (7th Cir. 2004); Rules Governing § 2255 Cases Rule 6(a). However, because the government has not yet filed its answer, discovery is premature. Similarly, appointment of counsel is premature. Although Masarik has written to nine law firms seeking assistance and has been turned down by three, he has been able to identify the issues he is raising and communicate with the court. After reviewing the answer and reply, the court may revisit Masarik's request for the appointment of counsel, if that appears to be warranted. Now, therefore,

IT IS ORDERED that Masarik's motion for reconsideration (Doc. 10) is denied without prejudice.

IT IS FURTHER ORDERED that the respondent shall file its answer on or before June 22, 2012.

IT IS FURTHER ORDERED that Masarik may file a reply on or before July 13, 2012.

Dated at Milwaukee, Wisconsin, this 18th day of May, 2012.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE